

MET1.0003



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: )  
Labeeb, et al. )  
               )  
For:   METHOD AND APPARATUS   )  
     FOR DELIVERY OF TELEVISION) )  
     PROGRAMS TARGETED       )  
     DE-COUPLED ADVERTISING   )  
               )  
Application No.: 09/893,192   )  
               )  
Filed:   June 27, 2001       )  
               )  
               ) February 27, 2002  
               ) Los Angeles, California 90067

---

**DECLARATION OF SANDFORD S. ETTINGER AND**  
**STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF**  
**NON-SIGNING INVENTOR UNDER 37 CFR 1.47(a)**

Assistant Commissioner for Patents  
Washington, D.C. 20231

I, Sandford Ettinger, Esq. hereby declare that the following is true and correct, and if called upon could and would testify to the following:

1. I am an attorney licensed to practice law, in good standing and residing in the State of California.

2. I am the general counsel and legal representative of Metabyte Networks, Inc. (hereinafter "MNI"), the owner by agreement of all rights, title and interest to the above-referenced United States Patent Application.

3. MNI is a Delaware Corporation, licensed to do business in the State of California and having its principal place of business at 39350 Civic Center Drive, Suite 100, Fremont, California 94538.

4. On behalf of MNI, I communicated with Mr. Ariel (Isaac) Bentolila, an inventor in this application and I have been unsuccessful in obtaining his signature on the Declaration for this United States Patent Application.

5. Mr. Bentolila was an employee of MNI when he participated in the invention claimed by this U.S. patent application, but is not longer an employee of MNI.

6. While an employee of MNI, Mr. Bentolila had a duty to assign all rights, title and interest in his inventions to MNI. A true copy of Mr. Bentolila's "Employee Invention Assignment and Confidentiality Agreement with Metabyte Networks, Inc. is attached hereto as Exhibit A.

7. On December 3, 2001, I sent a letter to Mr. Bentolila informing him of the filing of this United States Patent Application and the patent office requirements that all inventors sign a Declaration as well as his duties under his Agreement to execute an Assignment. This letter was sent via United States Postal service certified mail/return receipt requested on December 3, 2001. A true copy of the letter is attached hereto as Exhibit B.



8. The letter was sent via certified mail to Mr. Bentolila at his last known and believed current address:

Ariel (Isaac) Bentolila  
2665 Keystone Avenue  
Santa Clara, California 95051

9. Evidence of Mr. Bentolila's receipt of my letter and its associated materials is provided. A true copy of the certified mail receipt and return receipt postcard, showing a delivery date of December 4, 2001 is attached hereto as Exhibit C.

10. The other joint inventors have executed a Declaration complying with 37 CFR 1.63 and 37 CFR 1.47(a). Therefore, Applicant hereby requests that the Patent Office accept the filing of a partially executed Declaration and Power of Attorney under 37 CFR 1.47(a) with no further delay in the examination and issuance of this patent application.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and submit this Statement on behalf of Metabyte Networks, Inc.

Dated: 2/27/02

Sandford S. Ettinger  
General Counsel

**CERTIFICATE OF MAILING**  
I hereby certify that this correspondence is being deposited with the United States Postal Service, first class mail in an envelope addressed to the: Commissioner, Assistant Commissioner for Patents, Washington, D.C. 20231 on 2/28/02.  
Evelyn M. Ryan 2/28/02  
 (Type or print name of person mailing paper) Evelyn M. Ryan (Signature of person mailing paper)  
 (TAKLSMET1\MEY1.0003\declaration.327)

**COPY****METABYTE NETWORKS, INC.****EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT**

In consideration of, and as a condition of my employment with Metabyte Networks, Inc., a California corporation (the "Company"), I hereby represent to, and agree with the Company as follows:

**1. Purpose of Agreement.** Employee understands that the Company is engaged in a continuous program of research, development, production and marketing in connection with its business and that it is critical for the Company to preserve and protect its Proprietary Information (as defined below), its rights in Inventions and in all related intellectual property rights. Accordingly, I am entering into this Agreement as a condition of my employment with the Company, whether or not I am expected to create inventions of value for the Company.

**2. Employment at Will.** Employee understands and agrees that this Agreement does not constitute a contract of employment or obligate Company to employ Employee for any stated or fixed period of time. Employee understands and agrees that Employee's employment with Company is at will, and may be terminated by Company or Employee at any time and for any reason or for no reason, with or without cause.

**3. Disclosure of Inventions.** I will promptly disclose in confidence to the Company all inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works and trade secrets ("Inventions") that I make or conceive or first reduce to practice or create, either alone or jointly with others, during the period of my employment, whether or not in the course of my employment, and whether or not such Inventions are patentable, copyrightable or protectible as trade secrets.

**4. Reimbursement.**

a. Under this Agreement, Employee will be reimbursed for any expenses incurred provided that such reimbursement is authorized under Company's prevailing policies.

b. Employee may participate in Company's employee benefit programs to the extent that the same are open to other employees in similar Company positions. Company reserves the right to delete, modify, or otherwise amend any of such programs and eligibility requirements for the same in its sole discretion.

c. Authority. Employee understands and agrees that he or she has no authority, express or implied, to enter into any obligation or responsibility on Company's behalf without, in each instance, obtaining the prior written authority of an officer of Company to do so.

**5. Work for Hire: Assignment of Inventions.** I acknowledge and agree that any copyrightable works prepared by me within the scope of my employment are "works for hire" under the Copyright Act and that the Company will be considered the author and owner of such copyrightable works. I agree that all Inventions that (a) are developed using equipment, supplies, facilities or trade secrets of the Company, (b) result from work performed by me for the Company, or (c) relate to the Company's business or current or anticipated research and development, will be the sole and exclusive property of the Company and are hereby irrevocably assigned by me to the Company.

6. **Labor Code 2870 Notice.** I have been notified and understand that the provisions of paragraphs 3 and 5 of this Agreement do not apply to any Invention that qualifies fully under the provisions of Section 2870 of the California Labor Code, which states as follows:

ANY PROVISION IN AN EMPLOYMENT AGREEMENT WHICH PROVIDES THAT AN EMPLOYEE SHALL ASSIGN, OR OFFER TO ASSIGN, ANY OF HIS OR HER RIGHTS IN AN INVENTION TO HIS OR HER EMPLOYER SHALL NOT APPLY TO AN INVENTION THAT THE EMPLOYEE DEVELOPED ENTIRELY ON HIS OR HER OWN TIME WITHOUT USING THE EMPLOYER'S EQUIPMENT, SUPPLIES, FACILITIES, OR TRADE SECRET INFORMATION EXCEPT FOR THOSE INVENTIONS THAT EITHER: (1) RELATE AT THE TIME OF CONCEPTION OR REDUCTION TO PRACTICE OF THE INVENTION TO THE EMPLOYER'S BUSINESS, OR ACTUALLY OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OF THE EMPLOYER, OR (2) RESULT FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE EMPLOYER. TO THE EXTENT A PROVISION IN AN EMPLOYMENT AGREEMENT PURPORTS TO REQUIRE AN EMPLOYEE TO ASSIGN AN INVENTION OTHERWISE EXCLUDED FROM BEING REQUIRED TO BE ASSIGNED UNDER CALIFORNIA LABOR CODE SECTION 2870(a), THE PROVISION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS UNENFORCEABLE.

7. **Assignment of Other Rights.** In addition to the foregoing assignment of Inventions to the Company, I hereby irrevocably transfer and assign to the Company: (a) all worldwide patents, patent applications, copyrights, mask works, trade secrets and other intellectual property rights in any Invention; and (b) any and all "Moral Rights" (as defined below) that I may have in or with respect to any Invention. I also hereby forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Invention, even after termination of my work on behalf of the Company. "*Moral Rights*" mean any rights to claim authorship of an Invention to object to or prevent the modification of any Invention, or to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right".

8. **Assistance.** I agree to assist the Company in every proper way to obtain for the Company and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for the Company's Inventions in any and all countries. I will execute any documents that the Company may reasonably request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections. My obligations under this paragraph will continue beyond the termination of my employment with the Company, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance. I appoint the Secretary of the Company as my attorney-in-fact to execute documents on my behalf for this purpose.

9. **Proprietary Information.** I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to me by the Company that relates to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company or any other party with whom the Company agrees to hold information of such party in confident ("Proprietary Information"). Such Proprietary Information includes but is not limited to Inventions, marketing plans, product plans, business strategies, financial information, forecasts, personnel information and customer lists.

10. **Confidentiality.** At all times, both during my employment and after its termination, I will keep and hold all such Proprietary Information in strict confidence and trust, and I will not use or disclose any of such Proprietary Information without the prior written consent of the Company, except as may be necessary to perform my duties as an employee of the Company for the

benefit of the Company. Upon termination of my employment with the Company, I will promptly deliver to the Company all documents and materials of any nature pertaining to my work with the Company and I will not take with me any documents or materials or copies thereof containing any Proprietary Information.

**11. No Breach of Prior Agreement.** I represent that my performance of all the terms of this Agreement and my duties as an employee of the Company will not breach any invention assignment, proprietary information or similar agreement with any former employer or other party. I represent that I will not bring with me to the Company or use in the performance of my duties for the Company any documents or materials of a former employer that are not generally available to the public or have not been legally transferred to the Company.

**12      Other Agreements.**

a.      I understand that my employment with the Company requires my undivided attention and effort. As a result, during my employment, I will not, without the Company's express written consent, engage in any employment or business other than for the Company, or invest in or assist in any manner any business which directly or indirectly competes with the business or future business plans of the Company.

b.      Employee agrees that information regarding all elements of personal compensation is considered by Company to be personal and confidential and is not to be disclosed to or discussed with any other Company employees with the exception of Employee's direct manager and/or officers of Company. Inappropriate disclosure of such information will be treated as a breach of Proprietary Information.

c.      Employee agrees to adhere to policies and procedures as defined by Company. Company reserves the right to delete, modify or otherwise amend any such policies and procedures in its sole discretion at any time without notice.

d.      Employee hereby authorizes Company to notify others, including but not limited customers of Company and Employee's future employers, of the terms of this Agreement and Employee's responsibilities hereunder.

e.      All facts concerning Employee's background, education, experience and employment history submitted to Company are true and correct.

**13. Employee's Innovations.** Employee may, upon submission of all relevant facts in writing, request a written statement from his or her manager which will serve to formally acknowledge that Company has no right, title or interest in Employees Innovations that (I) are developed entirely on Employee's own time, (ii) are developed using equipment, supplies, facilities or trade secrets not belonging to Company, (iii) result from work not performed by Employee for Company and (iv) relate at the time of conception or reduction to practice to no business or actual or demonstrably anticipated research or development of Company. In order to be operative and effective, such written waiver must be signed by Employee's manager and Company's legal counsel, if they each believe that such waiver is appropriate under the terms of this Agreement, and a copy will be placed in Employee's personnel file with an original copy to be retained by Employee.

**14. Notification.** I hereby authorize the Company to notify my actual or future employers of the terms of this Agreement and my responsibilities hereunder.

**15. Non-Solicitation.** During, and for a period of one (1) year after termination of, my employment with the Company, I will (a) not directly or indirectly solicit or take away suppliers, customers, employees, consultants or clients of the Company for my own benefit or for the benefit of

any other party, and (b) notify Company in the event I become an employee of any client of the Company.

16. **Certain Obligations Upon Termination of Employment.** On termination of this Agreement by either Company or Employee, Employee will promptly deliver to Company any and all computer hardware, documents, diskettes, materials, and other property of any kind pertaining to his or her employment, including without limitation any Proprietary Information and/or any Innovations. Employee will not make or retain any copies or abstracts of any of the above materials.

17. **Name and Likeness Rights, Etc.** I hereby authorize the Company to use, reuse, and to grant others the right to use and reuse, my name, photograph, likeness (including caricature), voice, and biographical information, and any reproduction or simulation thereof, in any media now known or hereafter developed (including but not limited to film, video and digital or other electronic media), both during and after my employment, for whatever purposes the Company deems necessary.

18. **Injunctive Relief.** I understand that in the event of a breach or threatened breach of this Agreement by me the Company may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

19. **Governing Law: Severability.** This Agreement will be governed and interpreted in accordance with the internal laws of the State of California, without regard to or application of choice of law, rules or principles. In the event that any provision of this Agreement is found by a court, arbitrator or other tribunal to be illegal, invalid or unenforceable, then such provision shall not be voided, but shall be enforced to the maximum extent permissible under applicable law, and the remainder of this Agreement shall remain in full force and effect.

20. **No Duty to Employ.** I understand that this Agreement does not constitute a contract of employment or obligate the Company to employ me for any stated period of time. This Agreement shall be effective as of the first day of my employment with the Company, namely:  
June 1, 2000.

21. **Miscellaneous.**

a. This Agreement states the entire agreement of the parties and supersedes all prior agreements, communications and understandings relating to the subject matter hereof. Neither party has entered into this Agreement by reason of or in reliance on any representations of fact or opinion which are not fully stated herein.

b. No waiver, amendment, or modification of any provision of this Agreement will be effective unless in writing and signed by the party against whom its enforcement is sought. No failure or delay by either party in exercising any right or remedy under this Agreement will operate as a waiver.

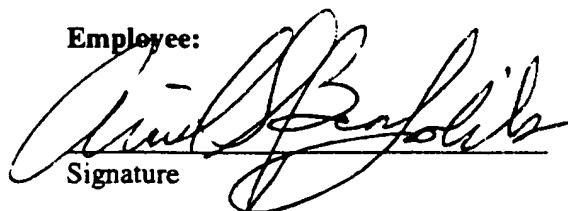
Metabyte Networks, Inc.

By: Manu Melta

Name: Manu Melta

Title: President

Employee:

  
Signature

Isaac Bentolila  
Name (Please print)



**Metabyte Networks, Inc.**  
39350 Civic Center Drive  
Suite 200  
Fremont, CA 94538  
Phone (510) 494-9700  
Fax (510) 494-9100  
[www.mbtv.com](http://www.mbtv.com)

December 3, 2001

Mr. Ariel Bentolila  
2665 Keystone Avenue  
Santa Clara, CA 95051

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Dear Mr. Bentolila,

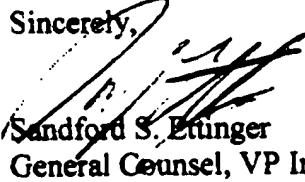
As you may know, Metabyte Networks, Inc. has filed a patent application entitled "METHOD AND APPARATUS FOR DELIVERY OF TELEVISION PROGRAMS AND TARGETED DE-COUPLED ADVERTISING". As you were an inventor of the above, Metabyte requires that you execute and return the enclosed "ASSIGNMENT" form. As you may also be aware, under the terms of Section 8 of your "Metabyte Networks, Inc. Employee Invention Assignment and Confidentiality Agreement" you are required cooperate with Metabyte with respect to obtaining patent and other intellectual property rights both during your employment and after to its termination and, in particular, you are required to sign patent-related documents.

Copies of the above patent application and the above agreement are enclosed.

Please sign the enclosed assignment, and have your signature witnessed and attested to by a notary public, within the next week and return it to me in the stamped envelope provided for your convenience. While you no longer work at Metabyte, you are required to do so. If you do not, our patent counsel will have to spend the time necessary to correct the situation and we will ask that you reimburse Metabyte for any related expenses. Assisting us will take just a moment of your time, for which we are willing to compensate you at your current hourly rate upon receipt of an invoice from you, and will make it unnecessary to consider action which is in neither of our interests. We will also, of course, pay for the notary fees.

Finally, we are proceeding with at least one additional patent application and I trust that we will be able to obtain your signature on any appropriate documents without the need for reminders along the above lines.

Sincerely,

  
Sandford S. Ettinger  
General Counsel, VP Intellectual Property

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 1 Print your name and address on the reverse so that we can return the card to you.
- 2 Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Mr. Ariel Bentolila  
 2665 Keystone Ave.  
 Santa Clara, CA  
 95051

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

B. Date of Delivery

10/14

C. Signature

X *M. Bentolila* Agent AddresseeD. Is delivery address different from Item 1?  YesIf YES, enter delivery address below:  No

## 3. Service Type

- |                                                    |                                                         |
|----------------------------------------------------|---------------------------------------------------------|
| <input checked="" type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail                   |
| <input type="checkbox"/> Registered                | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Insured Mail              | <input type="checkbox"/> C.O.D.                         |

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Number (Copy from service label)

70000520002487643075

S Form 3811, July 1999

Domestic Return Receipt

102585-00-M-0852

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only: No Insurance Coverage Provided)**

5075

SANTA CLARA CA 95051

8764

0024

0000

0520

0000

Postage

Certified Fee

Return Receipt Fee

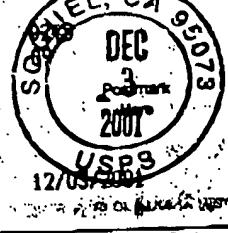
(Endorsement Required)

Restricted Delivery Fee

(Endorsement Required)

Total Postage &amp; Fees

\$ 8.10
\$ 2.10
\$ 1.30
\$ 0.00
\$ 11.70



Recipient's Name (Please Print Clearly) (To be completed by carrier)

Ariel Bentolila  
 Street, Apt. No., or PO Box No.  
 2665 Keystone Ave.  
 City, State, ZIP  
 Santa Clara, CA 95051

FIM Form 3811, February 2000

See Reverse for Instructions